



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

BOOK REVIEWS.

FRANCIS GOERTNER, *Editor-in-Charge.*

INTERNATIONAL REALITIES. By PHILIP M. BROWN. New York: CHARLES SCRIBNER'S SONS. 1917. pp. xvi, 223.

Professor Brown has not attempted to write a book on international law, strictly speaking, nor has he analyzed from the juristic standpoint the multiple legal questions that have arisen since the war began. He has sought, rather, to explain the apparent failure of international law to solve present international controversies and to find a better and sounder basis for the law of the future.

His treatise is composed in part of articles written for various publications, and, therefore, it does not possess complete literary or logical unity. It, however, contains a great many interesting and suggestive discussions. The underlying thought throughout is that international law has proceeded upon a series of theoretical assumptions which are opposed to realities; thus, the publicists have never been in contact with the facts of the real world, hence their work has been of little value. We have lived in a kind of fool's Paradise, believing that international law could be made by doctrinaires, and have learned by bitterest experience that the structure built up by them had no relation to actuality. The author cites as an instance the underlying postulate of international law that all nations are equal, and claims that this is as far as possible from the fact. On page 15:

"If nations are not equal in moral, intellectual, or even material influence; if they have not an equal concern in the adjustment of international interests; if they have not an equal voice in the creation, the interpretation, and the enforcement of law; if, in fact, the claim to equality stands squarely in the way of world organization itself; then it is folly to insist on the concept of equality as a basic principle of the law of nations."

He stresses the reality of nationalities and adverts to the difficulties that have arisen because of attempts in the name of law or convention to repress nationality. He finds as a basic principle:

"that the interests of nations must be mutually respected because of what Gareis well terms 'anticipated advantages of reciprocity as well as fear of retaliation.'"

He believes, therefore, that the defenders of international law must determine "the specific mutual interests which nations are prepared to recognize; and then to endeavor, in the spirit of toleration, friendly concern, scientific open-mindedness, to formulate the legal rights and obligations which these interests entail."

This discussion is interesting, but the difficulty arises in the different views which differing nations have as to their own interests and those of their neighbors. The author's criterion would seem to be analogous to that which the exponents of the Manchester school laid down as a basis for their utilitarian philosophy as regards the individual. I do

not know whether we would advance far by recognizing in principle something so difficult to determine in fact.

However, Professor Brown very properly recognizes that such a principle would be unworkable until a new and different spirit shall prevail, and that when it does prevail "there would be no great need of international tribunals or of leagues to enforce peace."

There is an exceedingly interesting and suggestive chapter on "Nationalism". The author believes that the satisfaction of national aspirations are very necessary if any settled international legal system is to be maintained. He, however, recognizes the difficulties and limitations which have prevented the full application of this principle. Referring to the most difficult question of Ireland, he says (p. 28):

"Moreover, the peculiar location of Ireland, as territory geographically appurtenant to Great Britain, demands a subordination of nationalistic desires to the common welfare of the people of the British Isles."

Adverting, on the other hand, to the Serbian question, he says:

"A civilization which could tolerate the denial of the just claims of the Serbian nation, and of the Serbs as a race, has surely merited the fearful chastisement it is now receiving."

The balance of power, as a European polity, he thinks utterly futile. He says (p. 32):

"At a time when men of affairs are just beginning to realize the utter folly of the principle of 'Balance of Power', and the criminal injustice of thwarting nationalistic aspirations, it is profoundly discouraging to find idealists, in the name of world peace, the brotherhood of man, denouncing the spirit of nationalism as essentially primitive, savage, provincial, chauvinistic, narrow, antagonistic, and inimical to the spirit of Internationalism."

I do not quite follow his reasoning as to the balance of power, for evidently some compromise must be made, as he admits in the case of Ireland; and if in future, as in the past, European and world politics are to be dominated by the greater nations, unless some balance of power be maintained, national entities as such must disappear before some dominant nation. While Professor Brown's observations in this regard are interesting and suggestive, he does not seem to have found any substitute for the old system, other than a further insistence upon the recognition of the principle of nationality, often, as in the case of the Balkan States, most difficult of application.

Conceding, as he does, the "justice of nationalism, as the only sound basis of the whole system of International Law", yet we are brought little nearer to a solution of the existing concrete problems. These difficulties he of course admits, but he is rather hard on the pious visionaries who continue to believe in the federation of the world and who "would gladly submit all of the international acts of the state, not only to the judgment but to a final decision of other states." He believes this plan based upon a refusal to recognize real-

ities and to differentiate between the State and the individual. "It is", he says, "a profound error to confuse individual standards with national standards of conduct. The State is not a moral personality in the same sense as a man." While this may be admitted with limitations, too great an insistence upon the doctrine would seem to play into the hands of Treitschke and von Tirpitz. I incline to the belief that, while the federation of the world is indeed a long way off, a due recognition of the probability, that in the future, as in the past, the tendency will be toward large and larger aggregates, leads to the conclusion that, at least over large portions of the earth, it will be possible to apply a very real law of nations.

For instance, a hundred years of arbitral and diplomatic settlement of international disputes between England and the United States are illustrative of the fact that some sort of common tribunal may yet be established between nations having at least, in a general way, common concepts of right and wrong. It would seem exceedingly probable that in future some system of law may be formulated which will make possible the establishment of an arbitral tribunal which will include England, United States, France, Italy, and some of the smaller nations. The tendency will be for the smaller nations to group about the larger.

Professor Brown's objection that no State will entrust its honor and vital interest to the judgment of other nations might not apply to some such arbitration agreement among a limited number of nations. The evolution of international relations, it appears to me, will be along this line. Reforms are usually heralded by the insistent visions of extremists; and, while it is not reasonable to suppose that any international tribunal could administer a system of fixed law for all the States of Europe and America under which the honor and conscience of all would be safe, a beginning may well be made after the war by recognizing the common consciousness and solidarity actually existing between France, the United States and Great Britain. Such a beginning would be pregnant of possibilities for good and would have in it the germs of a solution of the moot question of national feelings, aspirations and ambitions, *versus* a general international law based on the old static concepts.

The real inherent difficulty with international arbitration as a solvent is that the law is static, and where no legislative body exists, often finds itself in the presence of situations which cannot be solved by the existing rules. This difficulty is inherent where national minds are as different as that of Turkey, Germany and the United States, but does not apply to the situation between France, the United States or Great Britain.

I do not, therefore, feel that the various problems raised by Professor Brown's discussion of Nationalism are advanced by his conclusion that "The only safe rule, therefore, for statesmen who fully appreciate the nature of their responsibilities is the rule emphasized by Spinoza: that the supreme law of the State is the security of the State."

The doctrine of natural or fundamental rights, as applied to states, is vigorously attacked in his third chapter on "The Rights of States." "Whatever", he says, "may have been the services of political theorists in behalf of the general rights of man, it would seem clear that International Law cannot now fall back on mere theories. Its most ardent champions have rendered it poor service in recent times by appeals to natural law and 'absolute rights.' It will never be entitled to full

respect as a comprehensive, rational system of law until we have the courage to undertake anew to lay its foundations on the firm basis of international realities."

Professor Brown is in a sense right, but he does not seem to me to here concede enough force to the sentimental values. Aspirations for nationalistic unity or for independence are often purely sentimental in that those desiring them might have been economically and materially better off without them, but they are nevertheless facts which it is dangerous to ignore.

The general theory of the equality of nations in international law is probably not much more false, as Professor Brown admits, than that which holds individuals equal before the law. And yet both of these fictions have been and still are valuable, and there still is a sense in which men, small and great, nations, insignificant and powerful, are haled before the bar of public opinion and held to accountability on the basis of equality. As a matter of fact, the law of nations has been made, so far as it exists, by the greater powers; but an even verbal acceptance of the theory of the equality among the nations has, I believe, been of real value in forming some sort of general consciousness that small nations have rights. I do not believe for a moment that the treatment accorded to Belgium would have been adjudged by the neutral world a hundred years ago as severely as it has been today. This progress in sentiment has in some measure been due to an insistence upon the equality of nations before the law.

Professor Brown admirably sets forth the limitations of arbitration and the inadequacy of existing law to determine the great controversies that lead to war. He is quite right in saying that we must continually remind ourselves that (p. 98) "the substitution of law for war" is a slow, laborious process. It is an inspiring task calling for great patience, courage and faith.

Professor Brown has an interesting chapter on "Ignominious Neutrality", in which he points out the difficulties of maintaining neutrality in such a conflict as the present. He says, among other things:

"Belligerent interests take precedence over neutral interests. If a nation tries to remain neutral it finds it must suffer many restrictions and infringements of the rights of peace."

In this he would seem to make too general a statement. In applying it, as he does, to the world war, he is right in that no nation can afford, for its own interest, to be other than vitally concerned in the outcome; but his proposition would not apply to many struggles which, to the nations involved, may be of comparatively little significance. He is quite right in saying that:

"If a neutral nation does not wish to remain in a humiliating position it must be prepared to fight in behalf of its own best interests."

And he naturally adds that it must be certain that it fights on the right side. This chapter was written before the war and reads prophetically, for the difficulties that he so well outlined became so great, that our country, in order to conserve its honor and best interests, was forced out of an attitude of neutrality which had become quite impossible.

His attack on pacifism is well done, but appears scarcely consistent with his views elsewhere expressed, (p. 147):

"American pacifists are in danger of seriously discrediting the cause of peace if they attempt in any way to bring pressure to bear on the European powers and intrude as mediators in their political problems. These problems are of an intensely practical nature and must be solved by statesmen, not by impractical idealists. *The United States must let Europe settle its own problems. The policy of non-intervention in the political affairs of Europe, as laid down by Washington, is an extremely prudent policy to observe at this crisis.*" (Italics are the reviewer's.)

In view of present developments, the latter portion of this paragraph goes further, probably, than the learned Professor would now desire to go. While the attempt of pacifists here to bring about a truce and postpone a settlement of the vital questions now at issue on the world's battlefronts, was both futile and foolish, it does not prove that we have no concern with the affairs of Europe. As a matter of fact, Europe, in a political sense, has ceased to exist, and the primary interests which Washington in his farewell address, attributed to Europe as a matter of no concern to America, have, by reason of modern conditions, ceased to apply to Europe alone. Not only the United States must not let Europe settle its own problems, but it is vitally interested in seeing that they are settled rightly, or the war will have been in vain. The United States must actively participate in bringing about a settlement which, while assuring its own security and vital interests, will lead to a better system of international law and policy. The danger of pacifism was not in its attempted intervention, but in an intervention that in ultimate result was favorable to the policy of "blood and iron".

There is an interesting chapter on "Pan-Americanism" advocating a modification in the statement of the Monroe Doctrine.

In a final chapter Professor Brown endeavors to indicate certain principles useful in bringing about the substitution of law for war. He suggests, "First of all there is the basic principle of 'community of interests,' that 'body of convictions' which justifies the existence of separate, autonomous nations." He feels that in solving the questions raised by national aspirations that the wishes of the people should be freely consulted and that the plebiscitum should be more freely used. Where, however, as in the case of Austria or the Austrian and Italian hinterlands, it is impossible to apply the principle of absolute national sovereignty, autonomy should be granted, so that Poles, Bohemians, Hungarians, Roumanians or Italians may live together in harmony under a general government which does not concern itself with their internal affairs. His subsidiary principle, therefore, is that of federation; the third principle for which he contends is that of the international freedom of trade.

In regard to this, it may be suggested that such freedom of trade must be limited to those nations who understand freedom in the same sense. German peaceful penetration was brought about by militaristic methods and with an aim of ultimate subjugation. It would seem that the freedom of trade that the author desires must be limited

in some way to commercial relations which are wholly disconnected with political predatory ambitions. The world war, he thinks, the logical result of the balance of power theory. For the balance of power he would substitute complete recognition of the claims of nationality.

He fully admits, however, that any "human progress is exasperatingly slow", and that one can only indicate very general principles which are certain to be thwarted in their application until greater good will exists among men.

This book of essays on subjects of profound contemporary interest, is written in lucid and vivid style and is suggestive and interesting. Professor Brown has thought most intelligently and learnedly at the world's great problem, which it is not yet possible for any one to think through.

Frederic R. Coudert.

BOOKS RECEIVED:

PROCEEDINGS OF THE CONFERENCE ON SOCIAL INSURANCE. Bulletin of Labor Statistics Whole Number 122. Edited by ROYAL MEEKER. Washington: GOVERNMENT PRINTING OFFICE. 1917. pp. 935.

INTERNATIONAL LAW TOPICS: NEUTRAL PROCLAMATION AND REGULATIONS. By NAVAL WAR COLLEGE. Washington: GOVERNMENT PRINTING OFFICE. 1916. pp. 153.

BUSINESS LAW FOR ENGINEERS. By C. FRANK ALLEN. New York: MCGRAW-HILL BOOK CO. 1917. pp. v, 443.

THE BANKRUPTCY ACT OF 1898. COLLIER EDITION. Albany: MATTHEW BENDER & Co. 1917. pp. 140.

EQUITY IN ITS RELATIONS TO COMMON LAW. By WILLIAM W. BILLSON. Boston: BOSTON BOOK CO. 1917. pp. xii, 234.

ROMAN LAW IN THE MODERN WORLD. By CHARLES P. SHERMAN. Boston: BOSTON BOOK CO. 1917. 3 vols. Vol. I, pp. xxvii, 413; Vol. II, pp. xxxii, 496; Vol. III, pp. vii, 315.